

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

3 UNITED STATES OF AMERICA) CASE NO. 1:13CR337-1
) 1:14CR4-1
4 vs.)
) Winston-Salem, North Carolina
5 IDER VAZQUEZ MATOS) June 12, 2014
) 2:58 P.M.

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8 TRANSCRIPT OF THE **SENTENCING HEARING**
9 BEFORE THE HONORABLE THOMAS D. SCHROEDER
 UNITED STATES DISTRICT JUDGE

10
11 APPEARANCES:

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P R O C E E D I N G S

(The Defendant was present.)

THE COURT: Do you want to call the matter, please?

MS. HAIRSTON: Yes, sir. United States of America versus Ider Vazquez Matos, Case Number 1:13CR337-1. Mr. Matos is represented by Mr. Robert Broadie.

THE COURT: Let's go ahead and administer the oath to Dr. Lunsford.

(The Interpreter was duly sworn.)

THE COURT: All right. Dr. Lunsford, good to have you with us here today.

THE INTERPRETER: Thank you, Your Honor.

THE COURT: As I recall, where we left off is we had the objection to the three-level enhancement for a manager or supervisor under 3B1.1(b), and then you all had filed some briefs as to what I should take into account, if anything, from the presentence report and the evidence that's been presented. I've read those materials.

Do you want to be heard any further in light of where I am?

MS. HAIRSTON: Not for the government, Your Honor. I would like to ask the Court's forgiveness for a typo. On page 3, that should be December 18 is the date of Mr. Rangel Canela's debriefing not the 19th.

THE COURT: What document number?

1 **MS. HAIRSTON:** Document Number --

2 **THE COURT:** -- 59?

3 **MS. HAIRSTON:** Yes, sir, page 3, Your Honor.

4 **THE COURT:** December 18.

5 **MS. HAIRSTON:** Should be December 18 instead of 19,
6 Your Honor. I'm sorry.

7 **THE COURT:** All right. That's fine. Do you want to
8 be heard at all?

9 **MR. BROADIE:** Good afternoon, Your Honor. No, sir.

10 **THE COURT:** All right. I am a little surprised. I
11 would have thought maybe each one of you might want to have
12 been heard a little more.

13 The evidence suggests that Mr. Matos was running cocaine
14 from California to North Carolina and taking cash back. He had
15 a stash house where it was kept, and it was his house. Others
16 lived there, it sounds like, and that at least one other
17 person, and it sounds like two actually, modified the house in
18 order to hide the drugs. I think it was a Misael Vazquez, at
19 least according to one witness, and then Mr. Pina; and the
20 defendant's position is that these people acted more like
21 partners than they did anything else.

22 What am I to make of the fact that one of the two
23 co-defendants apparently, according to one of the
24 co-defendants, invested \$30,000 of their own money in one of
25 the defendant's businesses? What do I make of that? The

1 defendant says that's more of the kind of participation of a
2 partner as opposed to anything else.

3 **MS. HAIRSTON:** Your Honor, as with a lot of these
4 drug conspiracy cases, if you are addressing it to me --

5 **THE COURT:** Yes. I want to hear from everybody
6 because I'm -- I still have an open mind as to what the answer
7 is on this.

8 **MS. HAIRSTON:** I understand, Your Honor. Your Honor,
9 as with a lot of these drug conspiracies, oftentimes roles
10 change with respect to people who start out maybe being
11 partners. Someone else then has a source that allows that
12 person to then move into another role in the organization, and
13 that appears to be what happened here. There was money
14 invested in the original -- well, legitimate business, for lack
15 of a better word, I think is what I think that cooperator
16 indicated, and then at some point he was invited into the drug
17 trafficking business.

18 It is a close call, Your Honor, and we understand that,
19 but we do believe that there are sufficient facts to support
20 the enhancement in the presentence report.

21 **THE COURT:** Did Pina also have signing authority at
22 the bank?

23 **MS. HAIRSTON:** Apparently, Your Honor.

24 **THE COURT:** Is that true? In other words, for
25 purposes of my hearing today, should I accept that as true

1 because I am not sure the government contested that? I thought
2 that one of the witnesses may have claimed that.

3 **MS. HAIRSTON:** I believe Mr. Sabino Rangel Canela may
4 have said that he thought Mr. Francisco Garcia Pina had some
5 type of authority at the bank. Is that what Your Honor is
6 referring to?

7 **THE COURT:** Yes.

8 **MS. HAIRSTON:** And according to -- and the agent
9 tells me, Your Honor -- and Agent Purgason did an extensive
10 financial investigation in this case, and he confirms that he
11 did have that authority, that signature authority.

12 **THE COURT:** So what do I make of that? Which way
13 does that cut?

14 **MS. HAIRSTON:** It cuts in the defendant's favor, Your
15 Honor, quite frankly. If he had just as much control over the
16 bank account as did Mr. Matos, I couldn't stand here and tell
17 you anything other than that.

18 **THE COURT:** What do you contend are the facts that
19 would support the manager or supervisor here?

20 **MS. HAIRSTON:** Your Honor, I think Mr. Garcia and
21 Mr. Rangel Canela both go back and forth in their debriefings,
22 and as the agent testified to at the last hearing, with facts
23 indicating that at some -- various points the defendant was, in
24 their opinion, directing them, or they were working for him in
25 the drug trafficking business; and I think those are the facts,

1 Your Honor.

2 If those two witnesses were to come here and testify, they
3 would say exactly what -- almost exactly what is written in
4 those reports. It's a matter of perspective. From Mr. Matos'
5 perspective, they were partners and he wasn't directing them to
6 do anything. Just because someone may have been told to go to
7 the bank or to do this or to do that, his argument is that
8 that's not a role -- that's not his supervisory role.

9 Our position is that somebody has to be in charge and that
10 he was directing activities. He would send Mr. Rangel Canela
11 to the bank with money to deposit and deposits were made, and
12 that Mr. Garcia Pina indicated that while initially he made
13 that investment in the business, he was invited to participate
14 in moving merchandise and then became involved in the drug
15 trafficking business at the defendant's request and was not a
16 partner. That's where we fall, Your Honor.

17 **THE COURT:** Okay. Thank you. Do you want to be
18 heard any more?

19 **MR. BROADIE:** I just wanted to articulate, Your
20 Honor, that the statements that the Court did point out were
21 also made by Garcia Pina himself in his own debriefing in
22 regards to his ability to have signature authority.

23 I think that in my brief I pointed out the essential
24 arguments of the defendant as far as what the Court should
25 consider and the misleading and contradictory statements of

1 both of the individuals.

2 **THE COURT:** Okay. Let me ask Ms. Hairston. Do you
3 accept the notion that the defendant has properly contested
4 this issue, that is, by the way the defendant has brought the
5 issue forward and claimed that this information is unreliable
6 from Pina and Canella, that the issue is properly before me?
7 Do you follow my question?

8 **MS. HAIRSTON:** Yes, sir. I think given that the
9 Court can consider hearsay, then the defendant's argument is
10 that it is unreliable and the Court should not find that it is
11 reliable. Yes, my answer is, yes.

12 **THE COURT:** Okay. I think I agree, Ms. Hairston. I
13 think it is a very close call, and probably for that reason, if
14 no other, I am going to sustain the objection as to the
15 three-level enhancement.

16 On the one hand, I have some evidence that suggests that
17 the defendant is running the operation to some degree because
18 he's bringing the cocaine home, running it to the stash house,
19 and then others are allegedly at his direction changing the
20 stash house to make a place to store things.

21 There is also some other evidence that Mr. Canela says he
22 worked for Mr. Matos as a courier. There is some wiretap
23 evidence that I am not sure has been properly objected to, and
24 that's one of the reasons I asked Ms. Hairston whether the
25 issue is properly before me because there's been nothing to

1 show that the information of the wiretap is not appropriately
2 set forth in the presentence report.

3 Some of the wiretap information suggests that Mr. Matos
4 was in direct communication with Mr. Gutierrez, and that's more
5 consistent in some respect with the government's theory of the
6 three-level enhancement.

7 On the other hand, I have Mr. Pina who has signing
8 authority on the bank accounts that were used, and I have
9 Mr. Pina investing a fair amount of money, \$30,000, in the
10 business venture with the defendant. Now, that may be a way to
11 fence the money, and it may be nothing more than that, but
12 that's a little inconsistent with the position of being a mere
13 employee or being managed by somebody.

14 So I think there are enough questions about the testimony
15 that it's hard for me to find by a preponderance that the
16 three-level enhancement ought to apply in this case. It is a
17 close question, and I understand the government's predicament
18 it's in at this point because the individuals are not
19 available, but I am going to sustain the objection.

20 Any other objections to the presentence report?

21 **MR. BROADIE:** I am trying to think if we covered
22 them. The other one was one objection to the imposition of a
23 fine. I don't think we covered that at the last session. We
24 did object to the defendant's ability to pay the suggested fine
25 in the PSR. We objected due to the nature that the assets that

1 were listed in the presentence report had been seized by the
2 government, and I think those assets were primarily used as the
3 basis for the defendant's ability to pay a fine. As such, we
4 would object to that portion of it, Your Honor.

5 **THE COURT:** Hold on just a moment. Okay. I think
6 that's probably an issue as to imposition of sentence, and I am
7 going to treat it as that as opposed to an issue with respect
8 to the objection to the presentence report.

9 **MR. BROADIE:** Your Honor, I may have been somewhat
10 presumptuous, but there was another objection in lieu of the
11 finding that the leadership enhancement is not applicable. We
12 did object to a non-finding of the imposition of the safety
13 valve. We would also argue that in the Court's finding that
14 the leadership enhancement was not applicable in this case that
15 my client should be eligible for the safety valve reduction.

16 **THE COURT:** All right. Ms. Hairston, do you want to
17 speak to that issue?

18 **MS. HAIRSTON:** Yes, Your Honor. Could I have just a
19 second?

20 **THE COURT:** Yes, absolutely.

21 (Off-the-record discussion.)

22 **MS. HAIRSTON:** Your Honor, I think that I need to
23 call Special Agent Hughes for the Court just to hear him very
24 briefly explain to the Court the government's position that the
25 fifth criteria under 5C1.2 may not have been met at this time

1 by the defendant.

2 **THE COURT:** All right.

3 **MS. HAIRSTON:** I will call Special Agent James
4 Hughes, Your Honor. Your Honor, could I just say for the
5 record, I am calling the agent being fully aware that the case
6 law requires -- states that the burden is on the defendant to
7 show that he has actually met all five criteria; but to move
8 things along, I thought I would just go ahead and call the
9 agent so the Court can hear from him.

10 **THE COURT:** It's your call. If you want to do that,
11 that's fine.

12 **MS. HAIRSTON:** Yes, sir.

13 **DEA SPECIAL AGENT JAMES P. HUGHES,** GOVERNMENT'S WITNESS, at
14 3:14 p.m., being first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 **BY MS. HAIRSTON**

17 Q Would you state your name, please, sir.

18 A Special Agent James Patrick Hughes.

19 Q And, Agent Hughes, you are employed by the Drug
20 Enforcement Administration; is that correct?

21 A That's correct, ma'am.

22 Q In your capacity as a special agent with the DEA, have you
23 been involved in the investigation of Mr. Ider Vazquez Matos?

24 A Yes, ma'am.

25 Q Did you participate in debriefings with Mr. Matos after

1 his arrest in this case?

2 A Yes, ma'am.

3 Q How many debriefings have you conducted with Mr. Matos?

4 A Two, ma'am.

5 Q During the course of those debriefings, did he provide to
6 you information regarding his involvement in this case and
7 information about other individuals involved in drug
8 trafficking?

9 A Yes, ma'am, he did.

10 Q To date, have you formed an opinion as to whether the
11 information provided to you by Mr. Matos has been completely
12 truthful regarding his involvement in this activity and the
13 involvement of others?

14 A The key word would be "complete." He didn't provide a
15 complete picture as to his involvement and other people he may
16 have been involved with.

17 Q And could you be specific with the Court as to the
18 information that you find was lacking?

19 A During the course of the interviews, Mr. Vazquez pointed
20 out the sources of supply that he worked with that's also --
21 that was part and parcel of the investigation. Numbers for the
22 amount of cocaine between Mr. Garcia Pina and Mr. Vazquez
23 corresponded where -- my opinion is that his information was
24 not complete.

25 He was describing persons he was dealing with more

1 recently in time. This is the past couple of years prior to
2 his arrest. He was attempting to describe persons that he was
3 in the process of initiating narcotics transactions with. We
4 showed him features like Google Maps, and with it being more
5 recent in time, he had a terribly difficult time trying to
6 point out where he met these people at, in particular in
7 Southern California.

8 Again, that being more recent in time, I found it peculiar
9 why he just could not get that accomplished to at least give us
10 something as simple as an address or an area to begin looking
11 for these other parties.

12 Q Was that the primary part -- between the two debriefings,
13 was that particular issue there the primary reason that you
14 formed the opinion that he had not provided complete
15 information?

16 A Yes, ma'am.

17 Q During the debriefings, he did provide you with the name
18 of a specific individual with whom he had dealt in California;
19 is that correct?

20 A Correct. And that individual also lived here in North
21 Carolina from time to time.

22 Q And actually was moving back and forth between North
23 Carolina and California?

24 A Correct, ma'am.

25 Q All right. Now, other than what you just stated to the

1 Court, the defendant's inability to identify recent contact
2 with individuals in California with whom he dealt or to
3 identify addresses and locations, did you find anything else
4 during the two interviews you've conducted with him that, in
5 your opinion, were lacking in completeness or not being
6 complete in his information?

7 A You always take the information when you are dealing with
8 a subject in Mr. Vazquez's predicament with a grain of salt.
9 It's that more recent contact that he was describing in
10 Southern California. I felt it peculiar because here is the
11 opportunity he could provide. Because it is more recent in
12 time, it would give us, law enforcement, an opportunity to
13 investigate something that would be to his credit, and he chose
14 not to consummate that deal.

15 **MS. HAIRSTON:** All right, sir. That's all I have,
16 Your Honor. Thank you.

17 **THE COURT:** Any cross?

18 **MR. BROADIE:** Please.

19 CROSS-EXAMINATION

20 **BY MR. BROADIE**

21 Q Agent Hughes, when you say "consummate that deal," what do
22 you mean by that?

23 A Provide that information, because if it was somebody that
24 we could identify and tie into either an existing investigation
25 or to launch an investigation in another office, that would

1 certainly be made aware to both you, the defense counsel, the
2 prosecutor, and the Court.

3 **THE INTERPRETER:** Could you repeat that, please?

4 **THE WITNESS:** The information would afford us an
5 opportunity to follow up and investigate that person or persons
6 there in Southern California, and that information would be
7 known to certainly you, the defense counsel, the prosecutor,
8 and the Court.

9 **BY MR. BROADIE**

10 Q In that debriefing, who brought up this individual in
11 California?

12 A Mr. Vazquez did.

13 Q And he brought it up because he was trying to tell you
14 where he met the people at; correct?

15 A Correct.

16 Q And he told you it was at a truck stop, correct -- or,
17 excuse, me a truck dealership; correct?

18 A That was when we were talking about the other party, the
19 SOS, the source of supply, who he had described.

20 Q And then he told you that he would sometimes go to one of
21 their family member's house, and it was their house that he was
22 trying to describe for you; correct?

23 A We are talking about two different people at this point,
24 sir.

25 Q Which connection in California are you referring to?

1 A He described in detail his relationship with Emilio
2 Banuelos.

3 Q And he brought that individual name to your attention;
4 correct?

5 A Correct.

6 Q And you are saying that because he had a difficult time
7 locating the address on a Google map --

8 A No, it's the additional parties that he was trying to
9 describe that more recently he had some con -- shared some
10 contact with his potential sources for narcotics.

11 Q In California?

12 A In California.

13 Q So are you saying that there are people you were asking
14 him about that he refused to tell you about?

15 A It was his description of the people, but then he could
16 not locate where they were in Southern California. We spent
17 some time and gave him the opportunity to pinpoint or at least
18 locate it, but we -- once we got down to him looking at a
19 tablet and trying to point it out, he just couldn't find it.

20 Q It was his suggestion that someone get a tablet and get
21 the Google map; correct?

22 A Correct.

23 Q So wouldn't you say that he actually tried?

24 A He was giving us something, but he didn't finish locating
25 where that person was.

1 Q But is there any reason that you have that he knew where
2 the individual was and just refused to tell you?

3 A My belief is he's mentioning that there is other people
4 out there that he had recently shared contact with. He gives
5 us something, okay, this is to Mr. Vazquez' credit, but while
6 he is looking for it, suddenly he can't find it, and it's more
7 recent in time. As a truck driver, I thought that was -- I
8 think he would have been able to find it if he had brought it
9 up.

10 Q How long in totality had you debriefed Mr. Vazquez?

11 A I would have to consult back to both of those debriefings.
12 There is a start time and a finish time.

13 Q Would it be safe to say that you participated in over nine
14 hours' worth of debriefings?

15 A That figure may -- eight hours, nine hours.

16 Q And out of the nine hours, this is the only incident that
17 you think -- that you can mention to this Court that you feel
18 he was being incomplete?

19 A I believe that's the -- for me, that's the major thing
20 that I felt was incomplete about his information.

21 Q Were you -- do you remember the interview -- the last
22 interview with Mr. Vazquez in which he mentioned finding a GPS
23 device on his vehicle? Were you present at that debriefing?

24 A Yes.

25 Q Did he mention to you that -- or to the individuals in

1 that debriefing that he found that GPS device?

2 A I recall him saying he did find it.

3 Q Did he tell you all what he planned to do with that GPS
4 device? Did he tell you where that GPS device was?

5 A He agreed to return it to us; correct.

6 Q Do you remember when that GPS device was actually placed
7 on his vehicle?

8 A I wasn't involved in the investigation when it was, sir.

9 Q So would it be safe to say it was over several years ago?

10 A Yes, sir.

11 Q Did he have that GPS device returned to law enforcement
12 officers?

13 A I don't believe that's happened yet, sir.

14 Q Do you know if he voluntarily agreed to have his personal
15 cell phone shipped to North Carolina for agents to go through
16 it and have another debriefing about individuals who were in
17 his cell phone?

18 A I don't recall that conversation, no, sir.

19 Q Do you know -- were you at the debriefing where he
20 volunteered to have the keys sent to North Carolina for the
21 house in Liberty?

22 A Yes, sir.

23 Q Do you know if that happened?

24 A I am not aware of the keys coming to us.

25 **MR. BROADIE:** No further questions, Your Honor.

1 **MS. HAIRSTON:** Nothing further, Your Honor.

2 **THE COURT:** When you said more recent activity
3 involving the defendant, what do you mean by that? That is the
4 period of which you felt he was not being forthcoming?

5 **THE WITNESS:** Yes, Your Honor. During those
6 interviews, we were giving Mr. Vazquez an opportunity to be as
7 forthcoming as possible. As defense counsel said, it was nine
8 hours spent with Mr. Vazquez. It was the more recent activity
9 where he was -- he offered it to us. He was dealing recently,
10 so spring and summer of 2013, with parties in Southern
11 California where he was -- either they had approached him or he
12 had contact with them in order to transport narcotics.

13 When we gave Mr. Vazquez an opportunity to describe those
14 people in detail and where he had met them at, it just didn't
15 happen when we gave him an opportunity to point it out on a
16 map.

17 **THE COURT:** Was he able to identify any of them?

18 **THE WITNESS:** No, Your Honor.

19 **THE COURT:** Was he able to identify where he had met
20 them?

21 **THE WITNESS:** Only a vague description. I recall it
22 being off of Interstate 10 in Southern California.

23 **THE COURT:** And these are people other than the other
24 individual you mentioned earlier that he did identify?

25 **THE WITNESS:** Yes, Your Honor.

1 **THE COURT:** Did he identify more than one individual
2 that he dealt with out there?

3 **THE WITNESS:** Well, there were other people involved
4 with Mr. Emilio Banuelos, but as far as major suppliers in that
5 area, it would have been two by my recollection.

6 **THE COURT:** From a law enforcement point of view, is
7 there some benefit to getting information about more current
8 transactions as opposed to those that are a little older?

9 **THE WITNESS:** In my experience, Your Honor, that
10 would give us an opportunity to go to verify that, yes, this is
11 a person that's either a target of the investigation,
12 worthwhile to be investigated. We wouldn't know about him
13 otherwise from a defendant like Mr. Vazquez. We can
14 communicate that to the Court, and that would be to his
15 benefit.

16 **THE COURT:** There is maybe some suggestion from
17 Mr. Broadie about GPS being -- following the defendant with
18 GPS. Were you able to track what he was doing at the time when
19 you say that he was unable to identify people he met with?

20 **THE WITNESS:** That GPS device, my understanding, had
21 been placed some time earlier in the investigation and hadn't
22 been taken off of the vehicle. It wasn't active during that
23 time frame in 2013.

24 **THE COURT:** What do you mean it wasn't active?

25 **THE WITNESS:** The batteries had run out.

1 **THE COURT:** Okay. Anybody else have any questions in
2 light of mine?

3 **MS. HAIRSTON:** No, sir, Your Honor, but once the
4 agent steps down, may we approach?

5 **THE COURT:** Yes. Any further questions, Mr. Broadie?

6 **MR. BROADIE:** Not at this time, Your Honor.

7 **THE COURT:** All right. You may step down.

8 (At 3:29 p.m., the witness was excused.)

9 **THE COURT:** Please approach the bench.

10 (The following proceedings were had at the bench by the
11 Court and Counsel:)

12 **MS. HAIRSTON:** Your Honor, the government would like
13 to withdraw any objection we have to the application of the
14 safety valve. Agent Hughes is correct in all of his testimony.
15 I didn't ask him to review anything in preparation for his
16 testimony today, and he is mistaken about the 2013. It was
17 actually 2012 is the time frame that Mr. Matos was talking
18 about. I did not bring that interview with me, but two of the
19 other agents who are present recall that it was 2012 and not
20 2013. So he was in no way attempting to mislead the Court. He
21 is just simply mistaken about the time frame.

22 Also, the GPS device -- he was not here at the last
23 hearing. He was in training. The GPS device was returned to
24 us here in open court. So I just ask the Court to allow the
25 government to withdraw any objection we have to the -- I

1 actually wasn't objecting. I just wanted the Court to hear
2 from the agent because the agent's opinion on that particular
3 issue was problematic for him.

4 **THE COURT:** So it's your view that he is eligible for
5 the safety valve?

6 **MS. HAIRSTON:** Yes, sir. I will just err on the side
7 of the defendant and ask the Court to apply the safety valve.

8 **THE COURT:** Do you want me to give you a moment to
9 speak to the agents? And then I would like for you in open
10 court to state your position so that everybody understands.

11 **MS. HAIRSTON:** Sure.

12 **THE COURT:** Thank you. I appreciate that.

13 (End of bench conference.)

14 (Off-the-record discussion.)

15 **THE COURT:** All right.

16 **MS. HAIRSTON:** Your Honor, the government at this
17 time would withdraw any objection we would have to the safety
18 valve and ask the Court to find that the criteria set out in
19 Section 5C1.2 have been met in this case.

20 **THE COURT:** So just to be clear, the defendant
21 doesn't have more than one criminal history point, didn't use
22 violence or any credible threats of violence or possess a
23 firearm, no death or serious bodily injury, he is not an
24 organizer, leader, manager, or supervisor; and it's the
25 government's belief that not later than the time of sentencing

1 he truthfully provided the government all information and
2 evidence that he had concerning the offense or offenses that
3 were part of the scheme of conduct.

4 **MS. HAIRSTON:** Yes, sir. And I don't want the
5 government's position in any way to be a reflection on the
6 agent's testimony other than what I corrected at the bench,
7 Your Honor.

8 **THE COURT:** I understand.

9 **MS. HAIRSTON:** Thank you.

10 **THE COURT:** I won't regard it that way.

11 Anything else, Mr. Broadie?

12 **MR. BROADIE:** No, Your Honor, not in regards to
13 objections.

14 **THE COURT:** All right. So the presentence report is
15 going to be amended in the following respects:

16 Paragraph 54 will be zero, and that is the 3B1.1, and the
17 calculations will have an additional two-level decrease for the
18 safety valve. I am going to find that the defendant is
19 entitled to the protections of 3553(f) so -- for the benefits
20 of that, so there is a two-level reduction for that. So his
21 total offense level then becomes 31, and throughout the
22 presentence report, all the other references to those will be
23 changed.

24 I am not quite sure exactly what to do with the statements
25 of fact in the presentence report insofar as the defendant has

1 contested some of those. I found that there is no adjustment
2 for the role enhancement.

3 Does anybody contend that I have to make any further
4 change to the various statements of fact in the presentence
5 report?

6 **MR. BROADIE:** Not for the defendant, Your Honor.

7 **THE COURT:** Okay. Then I am going to adopt the
8 presentence report as amended, and that then gives us a new
9 calculation of the guidelines in the recommendation at the end.

10 The defendant's total offense level now becomes 31. The
11 criminal history category is I. The guideline range is 108 to
12 135. Count One has a 10-year mandatory minimum -- however, the
13 defendant has the benefit of the safety valve -- and a maximum
14 of life. Count One in the 14CR4-1 case has a 5-year statutory
15 maximum. Supervised release in the 13CR337 case is 2 to 5
16 years. In the other case, it is 1 to 3 years. The fine range
17 is 15,000 to \$10 million. Restitution does not apply. There
18 is a 100-dollar special assessment for each of the two counts.

19 Do the parties agree that those are the proper guideline
20 calculations in light of the rulings?

21 **MS. HAIRSTON:** Yes, sir.

22 **MR. BROADIE:** Yes, sir.

23 **THE COURT:** Now, I have a note that I did not accept
24 the factual basis and plea in these cases. Is that as to both
25 cases? Do you recall?

1 **MS. HAIRSTON:** That's my recollection, Your Honor. I
2 think we indicated we would rely on the undisputed portions of
3 the factual offense conduct in the presentence report, Your
4 Honor. I think it's still sufficient to support the plea in
5 this case.

6 **MR. BROADIE:** That will be our position as well.

7 **THE COURT:** Let me back up just a minute. Okay. I
8 will find that the presentence report, which I've obviously now
9 read in much detail, provides an independent basis in fact that
10 contains each of the essential elements of both of these
11 convictions, and I will therefore accept the plea as to both
12 cases; and the defendant is now adjudged guilty of Count One,
13 Object One, in 13CR337 and Count One in 14CR4-1.

14 All right. We've previously calculated the guidelines,
15 and I am adopting the presentence report as amended. As to all
16 matters in the presentence report, I am now adopting as
17 findings of fact.

18 Having considered the guidelines, which are advisory, and
19 then considering the factors under 3553(a), I think now I will
20 hear from the parties as to what you think an appropriate
21 sentence ought to be in the case. Mr. Broadie?

22 **MR. BROADIE:** Thank you, Your Honor. If it may
23 please the Court, Your Honor, I submitted a defendant
24 sentencing memorandum earlier in this case, and I won't go
25 through all the whole thing. I will stand on that request and

1 the information in it, but I would just like to highlight a
2 couple of things, one of which, Your Honor -- you've heard a
3 lot of testimony about the involvement of Mr. Matos as well as
4 other individuals in and around this conspiracy.

5 One of the things I want to point out about Mr. Matos out
6 of all this, Your Honor, is that he's always maintained a
7 mentality of industriousness. He's always trying to do things
8 to better himself, as I pointed out in this position paper, and
9 that of his family, so much so that everybody on the back row
10 from his wife, his brother, his oldest son, two friends, and
11 another brother all come from Miami. They drove up for the
12 last sentencing. They drove up here for the change of plea.
13 Every court date he's had, they supported him, which is a
14 testament, in my opinion, to what he means to his family and
15 how he's always been diligent in trying to provide for them.

16 I highlight in this position paper, Your Honor, that a
17 number of bad decisions, albeit his own, landed him in this
18 conspiracy; but there is an element of everything that started
19 off in an honorable situation for Mr. Matos.

20 I point those things out, Your Honor, because he is very
21 remorseful for his actions, so much so that he wanted to do
22 everything that he could to cooperate and accept responsibility
23 for his own actions very early in this case. It's always been
24 his position in my defense of him is that, Mr. Broadie, I just
25 want to accept responsibility for what I have done; and I've

1 relayed that to the government, and that's how we've always
2 proceeded in this case. However, he's also been very diligent
3 and defiant about things that he did not do or the things that
4 were not accurate representations of him.

5 In saying that, Your Honor, I will point out, as 3553
6 factors, the fact that he's never had any significant prison
7 sentence in the United States. I did point out to what we
8 constitute as a political refugee in Cuba and the treatment
9 that he sustained as to that. However, he has never served an
10 incarceration sentence, and that would have an impact on his
11 family.

12 As we argued somewhat in regards to the restitution, or
13 the assessment of the fine, everything that he's had,
14 everything that remotely had on his name on it, everything that
15 remotely had his wife's name on it has been taken. That's put
16 his family in a great, great deal of distress. Prior to this
17 indictment, Your Honor, his homestead was facing foreclosure,
18 and that kind of gives the Court some indication that at that
19 time he was working and he was not making all of this money
20 distributing cocaine through the United States. His house was
21 in foreclosure prior to him being indicted in this case.

22 But needless to say, Your Honor, he's always been diligent
23 in working. He's always had a mind to provide jobs for the
24 community. I pointed out in his sentencing memorandum his
25 desire to help the community, to be a pillar of the community.

1 If I may approach, Your Honor, one of the family members
2 brought a certificate, and I will show it to Ms. Hairston, in
3 regards to things that he has done with the United States
4 Special Forces where they've used his facility as a training
5 ground. He was given a certificate of appreciation for that.
6 Those are the kinds of things that he is proud of, Your Honor.

7 He knows that he did wrong. His age constitutes that he
8 will be a low risk of recidivism, and we think that if the
9 Court honored a sentence that we are requesting, that you won't
10 see Mr. Matos in this court again or any other court. I think
11 at his age, Your Honor, that any term of imprisonment will be a
12 significant punishment to deter one from future crimes, to
13 promote respect for the law, and to provide just punishment for
14 the citizens of this crime. As such, we'll stand by the
15 request that we made in our sentencing memo and ask the Court
16 to sentence him accordingly.

17 **THE COURT:** This doesn't have any date on it.

18 **MR. BROADIE:** That is correct, Your Honor. That is
19 how I received it. I am not certain as to the date in which
20 this occurred, but I can tell the Court that it was in the
21 Liberty area. So I would presume it was sometime in 2009,
22 2010. Thank you, Your Honor.

23 **THE COURT:** Thank you. Ms. Hairston?

24 **MS. HAIRSTON:** Your Honor, obviously, Mr. Matos did
25 work, and he did have some legitimate employment. However,

1 when he chose to become involved in the drug trafficking
2 business, he did so at a high level; and a lot of cocaine was
3 brought into this district, and it was brought in all the way
4 across the country. Money was transported back across the
5 country, and Mr. Matos benefited from that.

6 In this case, Your Honor, this is not a situation where it
7 was a one-time career. This was repeated activity. It was
8 activity that was engaged in knowingly.

9 **THE COURT:** How is he accountable for 23 kilos? It
10 seems to me there was a lot more cocaine.

11 **MS. HAIRSTON:** Your Honor, it's a matter of one
12 defendant -- one witness says this amount. Another witnesses
13 says that amount. Recollections differ, and it's always been
14 my position to err on the side of caution and to give a
15 defendant the benefit of the doubt.

16 However, as the Court has seen, and even as the defendant
17 has proffered, in some of these debriefings many more kilograms
18 of cocaine than that and the cash that was generated from --
19 the proceeds that were generated from that show that this was
20 significant drug activity with cocaine being brought into the
21 Middle District of North Carolina.

22 So in looking just at the nature and circumstances of the
23 offense, Your Honor, this was not low-level drug trafficking.
24 It was not one time. It was repeated activity that was set up,
25 knowingly engaged in for the purpose of making money.

1 And we would ask the Court in that regard, in looking
2 at -- while there are many factors in mitigation for Mr. Matos
3 under 3553(a), in looking at him and his background, the huge
4 aggravating factor from the government's position is the scale
5 of the drug trafficking that took place here.

6 We would ask the Court at a minimum to sentence him at the
7 middle of the range that the Court has announced, if not at the
8 higher end, because he did -- it's almost, Your Honor, more
9 aggravating for someone who has legitimate employment, who is,
10 as he holds himself out to be, a legitimate businessmen, who
11 then becomes engaged in this activity. He's not someone who
12 was struggling to make ends meet and to feed his family. It
13 was solely for the economic benefit that was derived; and for
14 that reason, Your Honor, we would ask the Court to sentence him
15 at a minimum at the middle of the range if not at the high end
16 of the range.

17 **THE COURT:** What is the government's position as to
18 how long Mr. Matos was involved in this conspiracy?

19 **MS. HAIRSTON:** Your Honor, I believe that we have
20 been looking at Mr. Matos -- the investigation began in or
21 around 2009, but I think the activity may have been before
22 that.

23 **THE COURT:** As I recall, one of the two co-defendants
24 said that we were selling him drugs personally back in 2003, if
25 I'm not mistaken.

1 **MS. HAIRSTON:** That's what Agent Hughes just pointed
2 out to me, Your Honor. I think any contact with illegal
3 substances may have begun back in 2003, but most certainly,
4 this heavy trafficking activity began in or around 2009, Your
5 Honor, and it was significant as well the number of -- as well
6 as the amount of money generated, Your Honor.

7 **THE COURT:** All right. Mr. Matos, sir, is there
8 anything you would like to say in your own behalf before I make
9 a decision as to a sentence? You have no obligation to speak.
10 You enjoy the right under the United States Constitution to
11 remain silent. If you exercise that right, I will not hold
12 that against you. On the other hand, I have the duty of
13 determining a sentence in your case. I am about to do that in
14 a moment. If you would like to be heard before I do that, now
15 would be the appropriate time to do so.

16 **THE DEFENDANT:** I would like to thank you for the
17 opportunity to speak. I have accepted responsibility, first of
18 all, because I know that I am guilty. The documents explain
19 when I got involved in this. It wasn't 2009. I have been
20 involved since 1999 through a DEA agent.

21 I again thank you for the opportunity. I was involved in
22 2009, only in 2009. I have opened my heart up from the very
23 beginning to tell the truth and nothing but the truth where I
24 went, who I speak with, who I met with. If there was any
25 missing detail, if there was any missing detail, it was because

1 it wasn't relevant.

2 I thank the DEA, the IRS because they have been very
3 respectful. I thank the prosecuting attorney who has been very
4 respectful, and I thank Mr. Broadie. I thank him for helping
5 me to cross the bridge.

6 The only thing I can add is that I never voluntarily got
7 involved in this business, nor did I make money. What I
8 gained, what I earned through this activity, I invested it in
9 the community center.

10 I thank you, thank you very much, and I apologize to my
11 family, to my wife, and to this country, which has opened its
12 doors to me. Thank you.

13 **THE COURT:** All right. Let me ask Mr. Broadie and
14 Ms. Hairston to step up here.

15 (The following proceedings were had at the bench by the
16 Court and Counsel:)

17 **THE COURT:** Do you want to be heard at all as to
18 whether any part of his allocution was going back on his
19 admissions in this case?

20 **MS. HAIRSTON:** Your Honor, Mr. Matos is difficult in
21 his presentations, and I am trying to give him the benefit of
22 the doubt still; and I quite frankly don't know why, but I
23 still am.

24 I sat through most of those nine hours with him, and what
25 he just said to the Court is the way he started out with us.

1 However, he then moved into discussing significant amounts of
2 drug trafficking. So his characterization of not doing it --
3 did he say not voluntarily?

4 **THE COURT:** That's what he said.

5 **MR. BROADIE:** Your Honor, I want to give him, of
6 course, the benefit of the doubt; but when I am speaking with
7 him, I think that maybe he is trying to say something and using
8 the wrong words or not appropriately.

9 **THE COURT:** He's pretty articulate.

10 **MR. BROADIE:** I think it's one of those situations
11 where his articulation -- maybe he's speaking faster than he is
12 thinking. I think that --

13 **THE COURT:** What is the -- I thought in the last
14 hearing the government claimed it had no knowledge of him
15 working with DEA?

16 **MS. HAIRSTON:** It wasn't a DEA agent, Your Honor. I
17 asked the other officers, the agents who were here, after the
18 hearing. It was a local officer whose name is Bobby Silvey,
19 who was a local officer down in either Chatham County or some
20 neighboring county, Randolph County.

21 **THE COURT:** Was the defendant, in fact, assisting
22 some law enforcement?

23 **MS. HAIRSTON:** According to Mr. Griffin, who is
24 retired IRS and who had some knowledge of the earlier
25 investigation, I think that Mr. Silvey did approach Mr. Matos

1 about providing information, and he probably did provide some
2 information at that time. However, he then became involved in
3 the drug trafficking. His position is that he only became
4 involved because he was cooperating. However, the
5 investigators' position is, and it turned out to be, that he
6 continued to traffic in drugs.

7 **MR. BROADIE:** Your Honor, I don't want to get into
8 testifying like we did last time, but I've had an extensive
9 amount of time to talk to him. I think his position is more
10 that he got into this and got deeper into it and didn't know
11 how to get out, so not necessarily because of the crux of
12 him --

13 **THE COURT:** I appreciate that. I was really most
14 interested in whether there was some factual support for his
15 notion that he was working with somebody in law enforcement.

16 **MS. HAIRSTON:** There was initially, Your Honor.

17 **THE COURT:** Okay.

18 **MS. HAIRSTON:** However, not during the bulk of the
19 investigation that gave rise to these charges.

20 **THE COURT:** Thank you. I appreciate it.

21 (End of bench conference.)

22 **THE COURT:** All right. I have taken the guidelines
23 into account. They are advisory. The guideline range now is
24 108 to 135 months. I have considered all the 3553(a) factors
25 in determining a sentence in the case, and the sentence that I

1 am going to impose is that which, in my view, is sufficient but
2 no greater than necessary to meet the sentencing objectives of
3 Section 3553(a) as well as any sentencing objectives that may
4 apply as well under the advisory guidelines.

5 I am going to impose 130 months in this case. I note that
6 is within the guideline range, and here are the reasons:

7 I understand the defendant has a request that I sentence
8 him to 72 months as a variance. I have considered that, and
9 for the record, I am going to decline to do that.

10 When looking at the nature and circumstances of the
11 offense, this was an extensive operation that covered a
12 significant period of time. The defendant was involved in a
13 fairly large conspiracy. I was troubled by whether there was
14 sufficient evidence to show that the defendant was managing and
15 supervising others, but there is no doubt that the defendant
16 operated the stash house, that others were at least working
17 with him to hide the drugs, and that he was working with the
18 others to distribute the drugs. The defendant himself is
19 accountable for 23 kilos of cocaine, which appears to be a very
20 conservative estimate on this record as to the defendant's
21 involvement here. There is evidence that at one point in time
22 there was \$1 million in proceeds simply available.

23 It was a large-scale operation, and I have considered the
24 need for the sentence to reflect the seriousness of the
25 offense, promote respect for the law, and provide just

1 punishment, again noting the length of the operation and the
2 extensiveness. There were a number of people involved, as
3 noted in the presentence report and the evidence the government
4 has presented.

5 The defendant's 51 years old. So I have taken his age
6 into account. He has a college education. He has permanent
7 resident status. It's a shame he got involved in this
8 operation. He had significant business operations. I give him
9 credit for having otherwise legitimate sources of income. I am
10 concerned about affording adequate deterrence, not only to the
11 defendant, but to others. As to the defendant, because this
12 operation went on for some time. As to others, because of the
13 extensive nature of the operation, and the sentence imposed has
14 to be significant to deter others from engaging in like
15 activity, particularly given the financial rewards that are
16 available.

17 As you know, Mr. Matos, there is a significant ripple
18 effect that your illegal conduct causes throughout the
19 community, not only within the law enforcement community, but
20 within the safety -- public safety for everyone else. It
21 affects economically others because these are illegal funds,
22 and it was just a significant amount of damage done to the
23 community by trafficking in cocaine.

24 So, as I've said, for those reasons, I am going to impose
25 130 months.

1 Mr. Matos, if you'll stand, it is ordered that you be
2 committed to the custody of the United States Bureau of Prisons
3 for a term of 130 months. That's 130 months in Case 13CR337-1,
4 Count One, Object One, and 60 months in Case 14CR4-1 to run
5 currently with Case 13CR337.

6 I am also imposing 5 years of supervised release in the
7 13CR337 case and 3 years in the 14CR4-1 case to run currently
8 with each other.

9 You are ordered to pay a special assessment of \$100 on
10 each of the two counts due and payable immediately. If you
11 cannot immediately comply, I do recommend that you participate
12 in the Inmate Financial Responsibility Program.

13 Now, there is the question about whether the defendant
14 should be ordered to pay a fine. It does appear to me that the
15 truck that was one of the significant assets has been seized,
16 and I do have a question of whether the defendant has already
17 had some of the assets, which would otherwise put him in a
18 position to pay a fine, seized.

19 What is your position, Ms. Hairston?

20 **MS. HAIRSTON:** Yes, sir. Your Honor, I just checked
21 with Agent Purgason. The Court is correct. The
22 tractor-trailer has been seized and at least two of the real
23 properties are subject to, I think, some type of forfeiture
24 proceeding, Your Honor. The residence in Miami is not. The
25 residence in Miami is not subject to any forfeiture

1 proceedings, Your Honor, but --

2 **THE COURT:** Why is that?

3 **MS. HAIRSTON:** I believe it's in foreclosure.

4 **MR. BROADIE:** It's in a foreclosure, Your Honor.

5 **MS. HAIRSTON:** I believe the Liberty Road, Your
6 Honor, that's listed under other expenses is subject to
7 forfeiture on page 22.

8 **THE COURT:** It appears to me that since the truck is
9 seized and there are mortgages on real estate, that he has a
10 negative net worth. Is that, in fact, the case?

11 **MS. HAIRSTON:** If it's not a negative net worth, Your
12 Honor, it would be close to it at this point, I guess.

13 **THE COURT:** Okay. You all have a seat a minute.
14 Mr. Parrish?

15 (Off-the-record discussion.)

16 **THE COURT:** Ms. Hairston, page 21 of the presentence
17 report, the business property at 421 Havana in Liberty, has a
18 footnote that says the defendant reported the business property
19 located at 10228 Old Liberty Road in Liberty had a current
20 market value of half a million dollars and a tax appraised
21 value of 52,800. Has that been seized?

22 (Off-the-record discussion.)

23 **MS. HAIRSTON:** Your Honor, according to Agent
24 Purgason, there is a mortgage on that property of around
25 \$300,000 with a value of 325. There is a lis pendens on the

1 property and a negotiated sale in the works on that.

2 **THE COURT:** So are you telling me there is really no
3 equity?

4 **MS. HAIRSTON:** According to Agent Purgason, there is
5 very little equity in that property, Your Honor.

6 **THE COURT:** All right. I am not going to impose a
7 fine. It looks like the defendant is not a position to pay a
8 fine. His truck has been seized, about \$100,000 or so, it
9 looks like -- 92,000-dollar truck has been seized.

10 All right. Supervised release -- in addition to the
11 standard conditions of supervised release, I am going to order
12 that the defendant provide any requested financial information
13 to his probation officer, that he submit to substance abuse
14 testing at any time as directed by the officer in view of his
15 prior cocaine use, that the defendant shall cooperatively
16 participate in a substance abuse treatment program, which may
17 include drug testing and inpatient and residential treatment,
18 and to pay for treatment services as directed by the probation
19 officer. During the course of treatment, he shall abstain from
20 the use of any alcoholic beverages.

21 The defendant shall submit his person, residence, office,
22 vehicle, or any property that's under his control to a
23 warrantless search to be conducted by a U.S. probation officer
24 at a reasonable time and in a reasonable manner based upon
25 reasonable suspicion of contraband or evidence of a violation

1 of a condition of release. Failure to submit to such a search
2 may be grounds for revocation, and the defendant shall warn any
3 residents that the premises may be subject to searches.

4 Upon completion of the custody sentence, the defendant
5 shall surrender to a duly authorized Immigration and Customs
6 Enforcement official in accordance with established procedures
7 provided by the Immigration and Naturalization Act, Title 8,
8 U.S. Code, Section 1101.

9 There's been no discussion of that provision, but I
10 presume that the defendant has accepted that; is that right?

11 **MR. BROADIE:** That's correct, Your Honor.

12 **THE COURT:** If he is ordered deported, the defendant
13 shall remain outside the United States during the term of his
14 supervision and shall not reenter the United States without the
15 permission of the U.S. Attorney General or the Secretary of the
16 Department of Homeland Security.

17 Anything further I need to address, Mr. Broadie, from the
18 defendant's point of view?

19 **MR. BROADIE:** No, Your Honor.

20 **THE COURT:** Was he named in other counts?

21 **MR. BROADIE:** I do apologize, Your Honor. Yes, Your
22 Honor. In 13CR337-1, he is named in other counts. We
23 respectfully move that those counts be dismissed.

24 **THE COURT:** Pursuant to the plea agreement and
25 without any objection from the government, the remaining counts

1 against the defendant are hereby ordered dismissed.

2 **MS. HAIRSTON:** Your Honor, would the Court enter a
3 destruction order for any drugs seized during the course of
4 this investigation in the event that they are being retained by
5 some of the local agencies who assisted in this investigation?

6 **THE COURT:** Yes. Are there any other defendants?

7 **MS. HAIRSTON:** There's just one, Your Honor, and
8 there is a plea agreement outstanding for Mr. Amadeo Ponce
9 Zagada.

10 **THE COURT:** So should I enter the order at the
11 expiration of time for appeal of all the cases?

12 **MS. HAIRSTON:** As to all defendants, yes, Your Honor.

13 **THE COURT:** All right. That will be so ordered.

14 Now, have you had an opportunity to speak with Mr. Matos
15 about any rights of appeal that he may have?

16 **MR. BROADIE:** Yes, Your Honor.

17 **THE COURT:** Please make sure he is aware if he
18 chooses to file notice of appeal that he must do so in writing
19 within 14 days of the entry of the Court's judgment in this
20 case. If he cannot afford the cost of his appeal, he can ask
21 the Fourth Circuit to waive the cost of the appeal.

22 Mr. Matos, good luck to you, sir.

23 All right. Anything further from the government today?

24 **MS. HAIRSTON:** No, sir.

25 **THE COURT:** We'll be in recess. You all have a good

1 afternoon.

2 (END OF PROCEEDINGS AT 4:10 P.M.)

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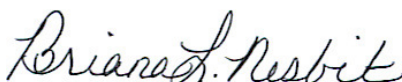
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1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF NORTH CAROLINA
3 CERTIFICATE OF REPORTER
4
5

6 I, Briana L. Nesbit, Official Court Reporter,
7 certify that the foregoing transcript is a true and correct
8 transcript of the proceedings in the above-entitled matter.
9

10 Dated this 10th day of September 2014.
11

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14 Briana L. Nesbit, RPR
15 Official Court Reporter
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